

1. **No Genuine Dispute of Material Fact**

The Creditor has demonstrated that there is no genuine dispute regarding the material facts relevant to this motion. The claim was properly filed and is supported by sufficient documentation. Neither the Trustee, the Town, nor the Petitioning Creditors have introduced any factual dispute that would preclude the entry of summary judgment. The oppositions from these parties fail to challenge the substance of the Creditor's claim.

2. **The Claim is Deemed Allowed by Law**

Under 11 U.S.C. § 502(a) and FED. R. BANKR. P. 3001(f), a properly filed proof of claim constitutes **prima facie** evidence of the validity and amount of the claim. As established in *Juniper Dev. Group v. Kahn (In re Hemingway Transp., Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993), this **prima facie** evidence must be rebutted by the objecting party through "substantial evidence." If the objecting party fails to produce substantial evidence, the **prima facie** evidence stands, and the claim should be allowed as a matter of law.

In this case, neither the Trustee, the Town, nor the Petitioning Creditors have produced any substantial evidence to rebut the **prima facie** validity of the Creditor's claim. The mere existence of a pending settlement or a motion to dismiss does not constitute substantial evidence capable of rebutting the Creditor's **prima facie** claim. Therefore, the claim should be deemed allowed under the standards set forth in *Hemingway Transport* and related case law.

3. **Response to Trustee's Opposition**

The Trustee's opposition is based on the premise that a pending settlement with the Town of Westborough may impact the outcome of the claim. However, the Trustee's reliance on a potential settlement is both procedurally and substantively flawed. The existence of a settlement does not preclude the Court from adjudicating claims that have been properly filed and remain unchallenged. The Creditor's claim is based on the substantial recovery efforts that have already benefited the estate, and the Trustee has failed to present any legal or factual basis to deny the allowance of this claim.

4. **Response to Town of Westborough's Opposition**

The Town's opposition centers on the pending motion to dismiss the bankruptcy case under 11 U.S.C. § 707(a). The Town argues that no claims should be allowed until the motion to dismiss is resolved. However, this argument is without merit. The filing of a motion to dismiss does not automatically stay proceedings or prevent the Court from addressing claims on their merits. The Creditor's claim is contingent upon the recovery of assets, which has already occurred, and the amount of the claim can be determined based on the final recovery. The Town's argument fails to rebut the **prima facie** validity of the Creditor's claim.

5. **Response to Petitioning Creditors' Opposition**

The Petitioning Creditors argue that the Creditor's claim should be denied because it is based on services rendered without a formal written agreement and that the amount of recovery is still undetermined. However, the Creditor's entitlement to compensation is rooted in the Debtor's operating agreement and is supported by several legal principles, including **quantum meruit**, **unjust enrichment**, **implied contract**, and **promissory estoppel**. These principles establish that the Creditor is entitled to reasonable compensation for services that have substantially benefited the estate. The lack of a formal written

agreement does not negate the Creditor's right to compensation, especially given the substantial recovery achieved.

The Creditor's claim for 30% compensation is consistent with industry standards for asset recovery services, as detailed in the email sent to the Trustee on July 17, 2024. The Petitioning Creditors have not provided any substantive evidence to challenge the validity of the Creditor's claim. Therefore, the claim should be allowed.

CONCLUSION

Based on the undisputed facts, the clear language of the Bankruptcy Code, the applicable Federal Rules of Bankruptcy Procedure, and the supporting case law, the Creditor is entitled to Summary Judgment on the Motion to Allow Claim. The Court should, therefore, grant this motion and allow the Creditor's claim against the bankruptcy estate of Westborough SPE LLC.

DATED: August 9, 2024, Respectfully submitted:

By creditor,



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CERTIFICATE OF SERVICE

I, Lolonyon Akouete, hereby certify that the above document is served by email and mailing a copy of the same, first-class mail, to the following:

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